CABE-RECOMMENDED POLICY UPDATE

4152.6P
~~Series 4000~~

PERSONNEL

FAMILY MEDICAL LEAVE ACT POLICY

The Board will provide leave to eligible employees consistent with the Family and Medical Leave Act of 1993 (FMLA) as amended and the Family Medical Leave Act as part of the National Defense Authorization Acts of 2008 and for Fiscal Year 2010 (which expanded certain leave to military families and veterans for specific circumstances) and 2013 Final Rules. Eligible employees (employment for at least one-year and at least 1,250 hours actually worked in the twelve-month period immediately preceding the commencement of the leave) are entitled to up to 12 work weeks of unpaid family and medical leave in any 12-month period. The District will continue to pay the district's share of the employee's health benefits during the leave. In addition, the District will restore the employee to the same or an equivalent position with equivalent benefits, pay and other conditions of employment after the termination of the leave in accordance with Board policy and collective bargaining agreements.

Paraprofessionals are also eligible to benefits equal to those under the federal FMLA if such paraprofessional was employed for at least one year and for at least 950 hours over the previous twelve-month period preceding the commencement of the leave. A paraprofessional is defined as a school employee who performs duties that are instructional in nature or delivers either direct or indirect services to students and/or parents and serves in a position for which a teacher has ultimate responsibility for the design and implementation of educational programs and services.

Eligible employees are entitled to take unpaid leave for a covered family member's service in the Armed Forces, for any one or for a combination of the following reasons:

- A "qualifying exigency" as defined by Department of Labor regulations arising out of a covered family member's covered active duty or Federal call to covered active duty (including as a member of the National Guard or Reserves) in the Armed Forces including deployment to a foreign country or to international waters;
- To care for a covered family member who has incurred a serious injury or illness in the line of duty while on covered active duty in the Armed Forces (includes National Guard and Reserves) provided that such duty or illness may render the family member medically unfit to perform duties of the member's office, grade, rank or rating: and/or
- To care for a covered family member who is a veteran who is undergoing medical treatment, recuperation or therapy for a service related illness or injury that was incurred or aggravated while on active duty and manifested itself before or after the member became a veteran, within five years after a veteran leaves service.

- To care for a parent of a military member called to active duty provided the military member is the spouse, (including same-sex marriages*), parent or child of the employee.

When leave is due to a "qualifying exigency" of a service member, an eligible employee may take up to 12 work weeks of leave during any 12-month period. When such leave is to care for an injured or ill service member, an eligible employee may take up to 26 work weeks of leave during a single 12-month period to care for the service member. Leave to care for an injured or ill service member, when combined with other FMLA-qualifying leave, may not exceed 26 weeks in a single 12-month period. Employees will not be deprived of any employment benefits accrued before taking FMLA leave.

The District will maintain health insurance benefits at the same basis as is provided to other similarly situated employees. Conversely, employees on FMLA leave are not entitled to accrue any seniority or benefits during the leave unless determined otherwise due to a collective bargaining agreement. When an employee returns from FMLA leave, benefits will be resumed in the same manner as provided prior to taking the leave, subject to any changes in benefit levels that may have occurred during the FMLA leave period and which affect the entire workforce. Leave available for eligible employees under FMLA is not intended to supplement leave otherwise provided to such employees. The District may require the eligible employee substitute any accrued vacation or sick leave for any part of the twelve-week period that may be taken for the serious health condition of a spouse, child or parent, or for the employee's own serious health condition.

In complying with the FMLA, the District will adhere to the requirements of the Americans with Disabilities Act as well as other applicable federal and state laws.

The Board, in compliance with state statute, shall provide to its employees who are a party to a civil union with the same family and medical leave benefits under the federal Family Medical Leave Act (FMLA) as are provided to employees who are party to a marriage. The term "marriage" includes a same-sex marriage which all states must now recognize, or common law marriages that either was entered into in Connecticut or another state that recognizes such marriages or if entered into out of Connecticut is valid in the place where entered into and could have been entered into in at least one state. In addition, the Board shall allow its employees leave time under this policy to serve as organ or bone marrow donors.

The District, in compliance with FMLA's regulations, will post and keep posted on its premises, in conspicuous places where employees are employed, a notice explaining the provisions of the FMLA and providing information concerning the procedures for filing complaints of violations of the Act. Electronic posting may be utilized.

(cf. 4118.14 - Disabilities)
(cf. 4151.2 - Family Illness)
(cf. 4152.3 - Maternity; Adoptive; Child Care)

FMLA does not affect any federal or state law prohibiting discrimination, or supersede any state or local law or collective bargaining agreement which provides greater family or medical leave

rights.

Legal Reference: P.L. 103-3 and 29 CFR Part 825 - The Family and Medical Leave Act of 1993, as amended by H.R. 4986, the National Defense Authorization Act for Fiscal Year 2008, Section 585. 29 U.S.C. §2601 et seq. and the National Defense Authorization act for Fiscal Year 2010, Public Law 111-84, section 565, Title V

Final Rule - published in Federal Register, Vol. 60, Nov. 4, Friday, January 6, 1995, as amended on February 3, 1995, March 30, 1995, and on November 17, 2008. Rules and Regulations (29 CFR Part 825).

Final Rule – published in Federal Register, Vol. 78, Wed. February 6, 2013

Final Rule – published in Federal Register, Vol. 80, No. 37 Wednesday, February 25, 2015

Connecticut General Statutes

46b-38oo Applicability of statutes to civil unions and parties to a civil union.

PA 07-245 An Act Concerning Family and Medical Leave for Municipal Employees.

PA 07-245 An Act Concerning Family and Medical Leave for Municipal Employees

PA 12-43 An Act Concerning Family and Medical Leave Benefits for Certain Municipal Employees

United States v. Windsor, U.S. 133 S. Ct. 2675 (2013)

Obergefell v. Hodges, No. 14-556, 135 S. Ct. 2584 (2015)

~~***PURPOSE***~~

~~The purpose of this policy is to establish guidelines for leaves taken by employees of the Board under the Federal Family and Medical Leave Act of 1993 ("FMLA").~~

~~***ELIGIBILITY***~~

Employees who have worked for the Board for at least twelve (12) months, and who have worked at least 1,250 actual work hours, or, in the case of school paraprofessionals in an educational setting, who have worked at least 950 actual hours of work, during the twelve (12) months immediately preceding the start of a leave, are eligible for unpaid leave under the FMLA.

REASONS FOR LEAVE

Leaves under the FMLA may be taken for the following reasons:

- incapacity due to pregnancy, prenatal medical care or child birth; or
- to care for the employee's newborn child; or
- the placement of a child with the employee by adoption or for foster care; or
- to care for the employee's spouse, child or parent who has a serious health condition; or
- to care for the employee's own serious health condition that renders the employee unable to perform the functions of his or her position; or
- to care for an injured or ill service member (see below – Length of Leave – for further information); or
- a qualifying exigency arising out of a family member's military service, including one or more of the following reasons (note – more detailed information on the following categories is available from **the Human Resources Coordinator**:
  - short notice deployment;
  - military events and related activities;
  - childcare and school activities;
  - financial and legal arrangements;
  - counseling;
  - rest and recuperation;
  - post-deployment activities;
  - parental care leave for military member's parent who is incapable of self-care and care is necessitated by the member's covered active duty;
  - additional activities that arise out of the active duty or call to active duty status of a covered military member, provided that the Board and the

employee agree that such leave qualifies as an exigency, and agree to both the timing and the duration of such leave.

LENGTH OF LEAVE

(a) Basic FMLA Leave Entitlement

If a leave is requested for one of the above-listed reasons, each eligible employee may take up to a total of twelve (12) weeks unpaid family or medical leave in any 12-month entitlement period.

The 12-month entitlement period for family or medical leave is measured on the basis of **a "rolling" 12-month period measured backward from the date an employee uses any FMLA leave.**

(b) Leave to care for an Injured or Ill Service member

In addition to the reasons for leave listed above, an eligible employee may take up to twenty-six (26) workweeks of FMLA leave during a 12-month period to care for (i) an injured or ill service member who is the employee's spouse, parent, child or next of kin, and who incurred the injury or illness in the line of duty and while on active duty in the Armed Forces or had a preexisting injury or illness prior to beginning active duty that was aggravated by service in the line of duty on active duty in the Armed Forces; or, (ii) an injured or ill covered veteran who is the employee's spouse, parent, child or next of kin.

For service members, the injury or illness must render the service member medically unable to perform the duties of his/her office, grade, rank or rating. This provision applies to service members who are undergoing medical treatment, recuperation, or therapy, are in outpatient status, or who are on the temporary disability retired list, for a serious injury or illness.

For covered veterans, the veteran must be undergoing medical treatment, recuperation or therapy for a serious injury or illness and s/he (1) was a member of the Armed Forces (including the National Guard or Reserves); (2) was discharged or released under conditions other than dishonorable; and (3) was discharged within the five-year period before the eligible employee first takes FMLA military caregiver leave to care for the veteran.[1]

For covered veterans, serious injury or illness means any of the following:

(i) a continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember's office, grade, rank, or rating; or

[1] The employee's first date of leave must be within the five year period. However, the employee may continue to take leave throughout the single 12 month period even if the leave extends past the five year period. Note - special rules may apply to calculating the five year period for veterans discharged between October 28, 2009 and March 8, 2013. This period will effectively be excluded from the five year calculation.

ii) a physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater, and such VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver leave; or

(iii) a physical or mental condition that substantially impairs the covered veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service, or would do so absent treatment; or

(iv) an injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

When combined with any other type of FMLA qualifying leave, total leave time may not exceed twenty-six (26) weeks in a single twelve (12) month period. Standard FMLA leave procedures described below apply to all requests for and designation of leave for this purpose. *However*, in the case of leave to care for an injured or ill service member, the 12 month period begins on the day such leave actually commences.

TYPES OF LEAVE AND CONDITIONS

(a) Full-Time, Intermittent and Reduced Schedule Leave

Full-time unpaid leave may be taken for any of the reasons permitted by the FMLA. Full-time leave excuses the employee from work for a continuous period of time.

Intermittent leave means leave taken in separate periods of time rather than for one continuous period of time. Examples of intermittent leave include: leave taken one day per week over a period of a few months; or leave taken on an occasional/as needed basis for medical appointments.

Reduced schedule leave is leave that reduces the employee's usual number of work hours per day for some period of time. For example, an employee may request half-time work for a number of weeks so the employee can assist in the care of a seriously ill parent.

An employee may take full-time, intermittent or reduced schedule leave whenever it is medically necessary for a serious health condition of the eligible employee, his or her spouse, child or parent. Intermittent leave or reduced schedule leave for other reasons will be permitted only with the approval of the Superintendent or his/her designee.

If intermittent or reduced schedule leave is medically required, the Board may, in its sole discretion, temporarily transfer the employee to another job with equivalent pay and benefits that better accommodates the type of leave requested. Also, special arrangements may be required of an instructional employee who needs to take intermittent or reduced-schedule leave which will involve absence for more than twenty (20) percent of the work days in the

period over which the leave will extend (for example, more than five days over a five-week period). For purposes of this policy, an instructional employee is defined as a teacher or other employee of the board who is employed principally in an instructional capacity and whose principal function is to teach and instruct students in a class, a small group, or an individual setting, and includes athletic coaches, driving instructors, and special education assistants such as signers for the hearing impaired. The term does not include teacher assistants or aides who do not have as their principal function actual teaching or instructing, nor auxiliary personnel such as counselors, psychologists, curriculum specialists, cafeteria workers, maintenance workers, bus drivers, or other primarily noninstructional employees.

(b) Both Spouses Working for the Same Employer

If both spouses are employees of the Board and request leave for the birth, placement of a child by adoption or for foster care, or to care for a seriously ill parent, they only will be entitled to a maximum combined total leave equal to twelve (12) weeks in any 12-month entitlement period. If either spouse (or both) uses a portion of the total 12-week entitlement for one of the purposes in the preceding sentence, each is entitled to the difference between the amount he or she has taken individually and the 12 weeks for FMLA leave for their own or their spouse's serious health condition in the 12-month entitlement periods.

(c) Light Duty

Should an employee be offered a light duty opportunity during a period of FMLA leave, time spent performing the light duty assignment will not count against the employee's FMLA leave entitlement. The employee's right to restoration to his or her job will be held in abeyance during the light duty assignment, or until the end of the applicable 12-month FMLA leave period.]

(d) Leave Taken by Instructional Employees Near the End of an Academic Term

If a leave taken by an instructional employee for any reason begins more than five (5) weeks before the end of an academic term, the Board may require that employee to continue the leave until the end of the term if the leave will last at least three (3) weeks and the employee would return to work during the three-week period before the end of the term.

If the employee begins a leave during the five-week period preceding the end of an academic term for a reason other than the employee's own serious health condition, the Board may require the employee to continue taking leave until the end of the term if the leave will last more than two (2) weeks and the employee would return to work during the two-week period before the end of the term.

If the employee begins a leave during the three-week period preceding the end of an academic term for a reason other than the employee's own serious health condition, the Board may require the employee to continue taking leave until the end of the term if the leave will last more than five (5) working days.

REQUESTS FOR LEAVE

Requests for a family or medical leave must be submitted to the human resources department at least thirty (30) days before the leave is to commence, if possible. If thirty (30) days' notice is not possible, requests must be submitted as soon as practicable under the circumstances.

For leaves taken because of the employee's or a family member's serious health condition, the employee must submit a completed "Physician or Practitioner Certification" form before the leave begins if possible. This form may be obtained from the personnel department. If such advance certification is not possible, the medical certification must be provided by the employee within fifteen (15) calendar days of the Board's request for the medical certification.

If an employee takes leave to care for his or her own serious health condition, immediately upon return to work the employee must provide medical certification that the health condition which created the need for the leave no longer renders the employee unable to perform the functions of the job. This certification must be submitted to the human resources department.

In connection with the Board's request for medical information, employees must be aware that the Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, the Board requests that employees not provide any genetic information when responding to a request for medical information. 'Genetic information,' as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.

USE OF PAID LEAVE

Accrued paid personal leave and accrued paid vacation will be substituted (in that order) for any unpaid portions of family or medical leave taken for any reason. However, where the leave is for the employee's own serious health condition, accrued paid sick leave shall be substituted for unpaid portions of family or medical leave prior to the substitution of accrued paid personal and accrued paid vacation leave. The amount of unpaid family or medical leave entitlement is reduced by the amount of paid leave that is substituted.

In addition, in cases involving absences due to a Workers' Compensation injury that also qualifies as an FMLA serious health condition, and if the employee agrees with the Board to do so, the Board will apply the employee's available accrued paid leave in increments as a supplement to the Workers' Compensation weekly benefit in an appropriate amount so that the employee can maintain his or her regular weekly income level.

MEDICAL INSURANCE AND OTHER BENEFITS

During approved family or medical leaves of absence, the Board will continue to pay its portion of medical insurance premiums for the period of unpaid family or medical leave. The employee must continue to pay his/her share of the premium, and failure to do so may result in loss of coverage. If the employee does not return to work after expiration of the leave, the employee will be required to reimburse the Board for payment of medical insurance premiums during the family or medical leave, unless the employee does not return because of a serious health condition or circumstances beyond the employee's control.

During an FMLA leave, an employee shall not accrue **[seniority, pension benefits, or sick or vacation leave,** unless otherwise required by any applicable collective bargaining agreement or Board Policy. However, unused employment benefits accrued by the employee up to the day on which the leave begins will not be lost upon return to work. Leave taken under this policy does not constitute an absence under Board's attendance policy.

REINSTATEMENT

Except for circumstances unrelated to the taking of a family or medical leave, an employee who returns to work following the expiration of a family or medical leave is entitled to return to the job held prior to the leave or to an equivalent position with equivalent pay and benefits.

ADDITIONAL INFORMATION

Questions regarding family or medical leave may be directed to the Superintendent or his/her designee. An employee may file a complaint with U.S. Department of Labor or may bring a private lawsuit against an employer. FMLA does not affect any federal or state law prohibiting discrimination, or supersede any state or local law or collective bargaining agreement which provides greater family or medical leave rights.

Legal References:
Connecticut General Statutes:
Conn. Gen. Stat. § 31-51rr

Regs. Conn. State Agencies 31-51rr-1, et seq.

United States Code:
Family and Medical Leave Act of 1993, 29 U.S.C. Section 2601 et seq., as amended

29 CFR Part 825.100 et seq.

Title II of the Genetic Information Nondiscrimination Act of 2008, Pub.L.110 233, 42 USC 2000ff; 29 CFR 1635.1 et seq.

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